

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**ISAIAS ROSALES, individually and d/b/a §
POLLOS ASADOS EL REGIO; §
POLLOS ASADOS EL REGIO #1, INC., §
d/b/a POLLOS ASADOS EL REGIO; §
POLLOS ASADOS EL REGIO #5, INC., §
d/b/a EL REGIO POLLOS ASADOS; §
POLLOS ASADOS EL REGIO #7, INC., §
d/b/a EL POLLO REGIO; §
POLLOS ASADOS EL REGIO #9, INC., §
d/b/a POLLOS EL REGIO; §
POLLOS ASADOS EL REGIO #10, INC.; §
POLLOS ASADOS EL REGIO NO. 11 INC.; §
POLLOS ASADOS EL REGIO NO. 12 INC.; §
POLLOS ASADOS EL REGIO NO. 13 INC.; §
POLLOS ASADOS EL REGIO NO. 14 INC., §**

Plaintiffs,

v.

**JOSE JUAN BAZALDUA and
EL POLLO REGIO IP, LLC,**

Defendants.

Civil Action No. 4:17-cv-00414

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs, Isaias Rosales, individually and d/b/a Pollos Asados El Regio; Pollos Asados El Regio #1, Inc., d/b/a Pollos Asados El Regio; Pollos Asados El Regio #5, Inc., d/b/a El Regio Pollos Asados; Pollos Asados El Regio #7, Inc., d/b/a El Pollo Regio; Pollos Asados El Regio #9, Inc., d/b/a Pollos El Regio; Pollos Asados El Regio #10, Inc.; Pollos Asados El Regio No. 11 Inc.; Pollos Asados El Regio No. 12 Inc.; Pollos Asados El Regio No. 13 Inc.; and Pollos Asados El Regio No. 14 Inc., file this Original Complaint against Defendants, Jose Juan Bazaldua and El Pollo Regio IP, LLC, as follows:

PARTIES

1. Plaintiff Isaias Rosales, individually and d/b/a Pollos Asados El Regio, is an individual residing in Texas who is represented by the undersigned.

2. Plaintiffs, Pollos Asados El Regio #1, Inc., d/b/a Pollos Asados El Regio; Pollos Asados El Regio #5, Inc., d/b/a El Regio Pollos Asados; Pollos Asados El Regio #7, Inc., d/b/a El Pollo Regio; Pollos Asados El Regio #9, Inc., d/b/a Pollos El Regio; Pollos Asados El Regio #10, Inc.; Pollos Asados El Regio No. 11 Inc.; Pollos Asados El Regio No. 12 Inc.; Pollos Asados El Regio No. 13 Inc.; and Pollos Asados El Regio No. 14 Inc., are Texas corporations represented by the undersigned.

3. Defendant Jorge Bazaldua is an individual residing in Texas who may be served at 3030 Lyndon B. Johnson Freeway, Suite 1440, Dallas, Texas 75234, or wherever he may be found.

4. Defendant El Pollo Regio IP, LLC, f/k/a El Pollo Regio, LLC, is a Texas limited liability corporation that may be served through Juan Jose Bazaldua, at 3030 Lyndon B. Johnson Freeway, Suite 1440, Dallas, Texas 75234, or wherever he may be found.

JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1338. The acts and omissions giving rise to the causes of action set out in this Original Complaint arise under the Lanham Act and associated law, 15 U.S.C. § 1051 *et seq.*

6. Venue is proper because the material transactions and occurrences at issue in this case occurred in the Southern District of Texas.

FACTUAL ALLEGATIONS

7. Plaintiff Isaias Rosales is the original founder of the restaurant chain known as “Pollos Asados El Regio.” These restaurants specialize in Monterrey-style chicken and other

Mexican fare. Mr. Rosales owns companies that operate a number of establishments across Texas, including locations in Alvin, Conroe, Houston, Katy, New Caney, Rosenberg, and Spring.

8. Mr. Rosales founded the business in the Houston area in 1998 or 1999, at some time registering with Harris County the assumed name of Pollos Asados El Regio. Mr. Rosales engaged an artist to develop a logo for the business and paid for the creation of that logo. The artist developed the logo, which the business has used ever since: a cartoon of a chicken in a yellow cowboy hat, wearing a red apron, against a blue background, with one wing pointing out, and the other wing down at its side.

9. Mr. Rosales was married to Nora Bazaldua, whom he helped to get started in business for herself. Mr. Rosales gave Ms. Bazaldua a non-exclusive license to use, among other things, his business's recipes, logo, processes, and business model. Mr. Rosales helped Ms. Bazaldua to start her own restaurants. She eventually became successful and, upon information and belief, still owns and operates three such restaurants in the Greater Houston area to this day.

10. Mr. Rosales also helped his wife's brother, Jorge Bazaldua, to get started in the business. Mr. Rosales also gave Mr. Bazaldua a non-exclusive license to use Mr. Rosales's business's recipes, logo, processes, and business model. Mr. Rosales helped Mr. Bazaldua to start his own restaurants. Mr. Bazaldua eventually became successful as well, and upon information and belief, Mr. Bazaldua still owns and operates several such restaurants in the Greater Dallas-Fort Worth and Austin areas to this day.

11. Mr. Rosales and Ms. Bazaldua divorced.

12. Unbeknownst to Mr. Rosales and without Rosales's permission, Mr. Bazaldua, through his company El Pollo Regio, LLC, now named El Pollo Regio IP, LLC, registered a federal

trademark in 2006 for a logo of a cartoon chicken and a business name “Pollo Regio”—both of which were essentially the same as Mr. Rosales’s.

13. In 2016, Mr. Bazaldua and his agents began calling and writing Mr. Rosales and the other Plaintiffs, claiming that Plaintiffs were infringing on Defendants’ federal trademark rights—even though Mr. Rosales had originally created the business, the name, the logo, the website (<http://www.pollosasadoselregio.com/>), the recipes, the processes, and the business model that had made it a successful and thriving business in the first place.

CAUSES OF ACTION

1. Injunctive Relief

14. Plaintiffs are and have been owners of the aforementioned mark and name, in which they have legally protected interests, and they have been using this mark and name continuously in commerce in various locations in Texas for nearly twenty years.

15. Defendants’ actions, namely, taking the non-exclusive license granted to them by Plaintiffs, registering a putatively exclusive federal trademark, and then expanding their business to locations across Texas not authorized or foreseen by Plaintiffs, all create a substantial likelihood of confusion in the minds of potential customers, caused by Defendants’ use of the mark and name, which are virtually identical if not deceptively similar to those owned and used by Plaintiffs, in a market wherein there is now substantial overlap in potential customers.

16. As senior users of the mark and name, Plaintiffs are entitled to enjoin Defendants from using their deceptively similar mark and name in commerce.

17. Defendants’ activities have caused, and will continue to cause, unless enjoined by the Court, irreparable injury to Plaintiffs, their business, reputation, and goodwill, for which they have no adequate remedy at law.

2. Declaratory Relief

18. Plaintiffs seek declaratory judgment that Plaintiffs are in fact (and have been for nearly twenty years) senior owners and users of the mark of the cartoon chicken with cowboy hat and the name “Pollos Asados El Regio” / “El Pollo Regio.”

19. Plaintiffs seek declaratory relief from the Court in order to have closure on this matter and be able to continue to conduct their business in peace and without wrongful interference from Defendants, who have recently begun to assert that their rights, if any, operate to the exclusion of the rights of Plaintiffs.

20. Plaintiffs additionally seek recovery of their costs and reasonable and necessary attorneys’ fees incurred in this action, as well as any other relief deemed appropriate by the Court.

DEMAND FOR JURY TRIAL

21. Plaintiffs demand trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand:

1. Permanent injunction against Defendants from use of the aforementioned mark of the cartoon chicken with a cowboy hat;
2. Permanent injunction against Defendants from use of the name “Pollos Asados El Regio” / “El Pollo Regio”;
3. Judgment declaring Plaintiffs as senior users of the mark of the cartoon chicken with a cowboy hat;
4. Judgment declaring Plaintiffs as senior users of the name Pollos Asados El Regio / El Pollo Regio;
5. Recovery of reasonable and necessary costs and attorney’s fees incurred in this action;

6. Leave to amend to add claims under applicable law; and
7. For such further relief as the Court deems just and equitable.

Respectfully Submitted,

THE BUENKER LAW FIRM

/s/ Josef F. Buenker

Josef F. Buenker

TBA No. 03316860

jbuenker@buenkerlaw.com

2030 North Loop West, Suite 120

Houston, Texas 77018

713-868-3388 Telephone

713-683-9940 Facsimile

ATTORNEY-IN-CHARGE

FOR PLAINTIFFS

OF COUNSEL:

Vijay Pattisapu

TBA No. 24083633

S.D. Tex. No. 1829615

vijay@buenkerlaw.com

THE BUENKER LAW FIRM

2030 North Loop West, Suite 120

Houston, Texas 77018

713-868-3388 Telephone

713-683-9940 Facsimile

ATTORNEY FOR PLAINTIFFS